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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JIMMY RODRIGUEZ on Habeas  
Corpus.

D068466

(Super. Ct. No. CRN23824)

Petition for writ of habeas corpus following Board of Parole Hearing's denial of parole. David B. Moon, Jr., Judge. (Retired judge of the San Diego Sup. Ct.) Petition denied.

Stephen M. Defilippis, under appointment by the Court of Appeal, for Petitioner.

Kamala D. Harris, Attorney General, Jennifer A. Neill, Assistant Attorney General, Phillip J. Lindsay and Gregory J. Marcot, Deputy Attorneys General, for Respondent.

I.

INTRODUCTION

Jimmy Rodriguez murdered Johnny Ochoa in 1992. Ochoa was Rodriguez's former girlfriend's new boyfriend. A jury found Rodriguez guilty of second degree

murder (Pen. Code, § 187, subd. (a)),<sup>1</sup> and found true an allegation that he personally used a firearm during the commission of the offense (§ 12022.5, subd. (a)). The trial court sentenced Rodriguez to an aggregate sentence of 20 years to life in prison.

At Rodriguez's most recent parole hearing, a panel of the Board of Parole Hearings (Board)<sup>2</sup> determined that Rodriguez continued to pose an unreasonable risk of danger to society if released from prison and denied him parole. The Board determined that Rodriguez remained dangerous in light of his inconsistent testimony at the parole hearing concerning the circumstances of the murder and his failure to demonstrate sufficient progress in therapeutic programming designed to address certain mental health deficiencies that contributed to Rodriguez's commission of murder.

Rodriguez filed a petition for writ of habeas corpus challenging the Board's denial of parole. Applying the extremely deferential standard of review applicable to the review of parole hearing decisions reaffirmed in *In re Shaputis* (2011) 53 Cal.4th 192 (*Shaputis*), we conclude that there is a "modicum of evidence" (*id.* at p. 219) to support the Board's determination that Rodriguez is unsuitable for parole because he would pose a danger to the public if released. Accordingly, we deny the petition.

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<sup>1</sup> Unless otherwise specified, all subsequent statutory references are to the Penal Code.

<sup>2</sup> For ease of reference, we refer to the panel of the Board as the Board.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

#### A. *The commitment offense*

This court's October 1994 opinion affirming Rodriguez's conviction describes the circumstances of the commitment offense as follows:

"At approximately 8 a.m. on September 19, 1992, Rodriguez visited his former girlfriend Christen Kreider at her parents' Vista home. Rodriguez had gone with Kreider for several years but had broken up with her several months before his September 19 visit. They remained friends. During the several months before the visit, Kreider had been going out with Johnny Ochoa.

"On September 19, Rodriguez told Kreider about an incident outside her home the night before. He had been mistakenly identified as Ochoa by two men. They held guns to his head until Rodriguez identified himself. The men said they were going to kill Ochoa. Kreider talked to Ochoa later that morning and told him to stay away because he was putting her family in danger. Around 11 a.m., Rodriguez and Kreider were in the bedroom when the doorbell rang. Kreider went to the door. Ochoa was there. Kreider put her head on his shoulder and cried as he handed her a key to her garage. Rodriguez came out of the bedroom. Ochoa stepped back and said, 'Put it away, fool.' Running toward Ochoa, Rodriguez repeatedly fired a handgun at him. Ochoa died of three gunshot wounds. Rodriguez fled, had his truck repainted and cut his hair and mustache."<sup>3</sup>

Our opinion further states that Rodriguez defended against the murder charge by presenting evidence that he acted in self-defense. In support of this defense, Rodriguez presented evidence that Ochoa always carried a firearm, frequently committed robberies,

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<sup>3</sup> The probation report indicates that police arrested Rodriguez less than a week after the murder.

and had threatened to kill Rodriguez several weeks before the killing. This court's opinion also stated:

"Rodriguez and Kreider testified Ochoa had a black pouch when he came to the home on September 19. He repeatedly tried to open it as Rodriguez shot. Rodriguez thought he was trying to obtain a gun. Rodriguez testified he removed a gun from the pouch before fleeing but someone later stole it."

B. *Rodriguez's 2015 parole hearing*

The Board held a parole hearing on January 29, 2015 at which it considered Rodriguez's preconviction history, the murder, and evidence related to postconviction factors.

Rodriguez testified at the hearing that, as a minor, he had not used drugs or alcohol and that he had not been involved in any criminal activity.<sup>4</sup> Around the time that he was 30 years old, Rodriguez "started hanging around with [a] negative crowd." After his wife had a baby, Rodriguez felt neglected, and his marriage began to fail. After separating from his wife, Rodriguez met Kreider, and lived with her for approximately a year. Rodriguez also began to use methamphetamine.<sup>5</sup> When asked why he began using methamphetamine, Rodriguez replied:

"The people I was hanging out [with] at the time, they were using meth. And when I was offered some, I did a line and then I went back and did some more. And I wanted to fit in with the crowd and I did what they were doing . . . ."

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<sup>4</sup> At another point in the hearing, Rodriguez testified that he had experimented with marijuana at age 16 and that he had begun to drink alcohol around the age of 18.

<sup>5</sup> According to Rodriguez, he did not begin to use methamphetamine until he was around 31 years old.

Kreider eventually broke up with Rodriguez and began dating Ochoa.<sup>6</sup> However, after Kreider broke up with Rodriguez, he continued to see her almost every day. They remained friends and used drugs together. In addition, Rodriguez reluctantly admitted at the parole hearing that he and Kreider had sex a "couple of times" after their breakup. Ochoa did not like the fact that Rodriguez was spending time with Kreider. Rodriguez admitted to "antagonizing" Ochoa and being jealous of Ochoa's relationship with Kreider.

Approximately two weeks before the murder, Ochoa and Rodriguez got into an argument during which Ochoa demanded that Rodriguez stop seeing Kreider. According to Rodriguez, Ochoa threatened to kill him during this argument. Rodriguez also said that Ochoa often carried a gun.

Approximately one week before the murder, Rodriguez illegally obtained a gun. Rodriguez explained that he began to carry the gun around because he "felt threatened," "humiliated," and "intimidated." Rodriguez also stated that his "intent was to use [the gun]."

According to Rodriguez, on the night before the murder, he was accosted by two or more people<sup>7</sup> outside of Kreider's house. One of the people in the group put a gun to Rodriguez's head and began to yell obscenities at him. Rodriguez realized that the group had confused him with Ochoa and that the group was upset with Ochoa because Ochoa had done something to them or to their family. The incident greatly angered Rodriguez,

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<sup>6</sup> Rodriguez contended that a witness's statement in the probation report that he had abused Kreider was inaccurate.

<sup>7</sup> The transcript of the parole hearing is not clear as to how exactly many people Rodriguez claimed assaulted him.

who believed that Ochoa was putting Rodriguez, Kreider, and her family in danger.

Rodriguez told Kreider about the incident.

The following morning, Rodriguez went to Kreider's residence. According to Rodriguez, approximately 20 minutes later, Ochoa showed up at the residence. Rodriguez continued, "[H]e said something to me," "I said something to him," and then "I shot him and I killed him." The following colloquy then occurred:

"Presiding [Commissioner]: Why?

"Inmate Rodriguez: Because I was angry. I was pissed off.

"Presiding [Commissioner]: Did [Ochoa] say anything to precipitate it or he just, doesn't sound like it. Just showed up and you shot and killed him?

"Inmate Rodriguez: Yes.

"Presiding [Commissioner]: Was he armed? Did he have a weapon?

"Inmate Rodriguez: No."

The presiding commissioner then discussed Kreider's prior statements concerning the murder.<sup>8</sup> Kreider stated that just before the killing, Ochoa told Rodriguez to "put it away," and said that she could see that Rodriguez had his hand behind his back. According to Kreider, Rodriguez then pulled a gun out from behind his back and shot Ochoa several times, causing him to fall to the ground.

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<sup>8</sup> Although it is not entirely clear from the transcript of the parole hearing, it appears that the presiding commissioner was referring to statements attributed to Kreider in the probation report.

At a later point during the hearing, the presiding commissioner reviewed an October 2014 psychological evaluation of Rodriguez. The evaluator stated that Rodriguez described the circumstances immediately before the killing as follows:

"All of the sudden, [Ochoa] got mad . . . and started coming toward me. I shot at the wall next to him and told him to get out, but he kept coming and I shot him. He went back and started unzipping a f[a]nny pack. And I shot him again. I kept on shooting. When he fell down, I kicked the f[a]nny pack off of him. There were some knife, [*sic*] drugs, keys and a gun. This is what I remembered seeing. I grabbed the gun. I yelled and told [Kreider] to call the ambulance. I got into my truck and left."

After reviewing this portion of the evaluation, the presiding commissioner remarked that this description of the events that precipitated the killing were "quite different" from Kreider's description. Rodriguez responded, "I'd go with her version." The presiding commissioner replied, "Well, this is what you told the clinician last year." Rodriguez then stated that he remembered the killing as he had described to the psychologist who performed the October 2014 evaluation. The presiding commissioner then stated, "But that's not what you said today." Rodriguez replied:

"I'm not, you know, the last time that the victim's family were here, I was, when I left here, I said to myself, if they ever show up again,<sup>9</sup> I'm not, I'm not going to try to say nothing [*sic*] bad about [Ochoa]. I'm taking full responsibility. You know, he didn't deserve to die, so — I did this. Okay. I'm not blaming [Ochoa] for anything."

After a commissioner stated that the Board was just "trying to figure out how you really feel about it," Rodriguez responded:

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<sup>9</sup> The transcript indicates that members of the victim's family were in attendance at the January 2015 parole hearing.

"Okay. I remember things different from what [Kreider] said. But then again, who knows what really happened? This is what I remember, but I'm not saying this is what happened. And when it comes down to it? I killed Johnny Ochoa. I'm the bad guy here, not him."

In discussing postconviction factors, a commissioner noted that in denying Rodriguez parole at his last parole hearing in April 2013,<sup>10</sup> the Board had relied primarily on Rodriguez's "attitude towards [his] drug abuse and how it related to the life crime." The commissioner noted that although Rodriguez attributed the "downward spiral" in his life to drug abuse, he "had not addressed [his] addiction to methamphetamine at all in prison until quite recently." Rodriguez responded, "Right. 2010." The commissioner continued by noting that "even now" Rodriguez was participating only in Al-Anon, a group designed to help family members of alcoholics, and that the group was "not for people who are drug addicts."

Rodriguez responded, "I have done all the substance abuse programming in this institution." Rodriguez added, "Everybody in Al-Anon is a drug addict or had drugs," and that the reason "we do the Al-Anon group is because NA [Narcotics Anonymous] or all the other groups is [*sic*] really hard to get into." When asked whether he was on a waiting list for Narcotics Anonymous, Rodriguez acknowledged that he was not.

In reviewing the remainder of Rodriguez's mental health programming, a commissioner noted that "prior to 2003, your self-help programming was nonexistent." The commissioner further noted that, since the last parole hearing, Rodriguez had

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<sup>10</sup> The January 2015 hearing was Rodriguez's fifth parole hearing.



participated in Al-Anon, and that he had completed a victim awareness course, a relapse prevention workshop in 2013, Advanced Alternatives to Violence in 2013, and SMART Recovery in 2013.<sup>11</sup> The commissioner also noted that Rodriguez had completed a "denial management" course, an anger management course, and a SAP program<sup>12</sup> in 2013. In addition, Rodriguez did Kartageo<sup>13</sup> and a relapse plan in AVP Basic<sup>14</sup> immediately before his last parole Board hearing in 2013. The commissioner stated that, although Rodriguez had taken "three or four anger management classes," he had done so over a period of 22 years, and commented that Rodriguez's self-help programming was "not that very in depth."

In reviewing other postconviction factors, a commissioner noted that Rodriguez's work history and vocational training were "exemplary," that his "disciplinary history is very minor" and that his parole plans were "reasonable." A commissioner also noted that Rodriguez was 55 years old.

C. *The Board's decision*

At the conclusion of the hearing, the Board issued an oral decision denying Rodriguez parole. The Board summarized its reasons for denying parole as follows:

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<sup>11</sup> SMART recovery is a "self help therapy group," that teaches "how to take responsibility for . . . choices and behaviors," and how "to enhance . . . recovery by understanding the benefits of . . . not using and how to cope with urges and cravings."

<sup>12</sup> The record indicates that SAP is a substance abuse treatment program.

<sup>13</sup> The record does not indicate the nature of the Kartageo program.

<sup>14</sup> "AVP" refers to "Alternatives to Violence Project," a "multi-cultural volunteer organization that is dedicated to reducing interpersonal violence in our society."

"The Panel reviewed all information received from the public and all relevant information that was before us today in concluding that the prisoner is not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. . . . In determining unsuitability, there were a few factors that we thought linked you to current dangerousness and we're going to go through those factors with you today. First is *past and present mental state, and past and present attitude about the crime*. And there were a couple issues in there. And the next one was your failure to demonstrate sufficient progress in areas that would show suitability in that you have not *engaged in institutional activities that indicate an enhanced ability to function in society*." (Italics added.)

With respect to Rodriguez's mental state and his attitude toward the crime, the Board noted that Rodriguez had been "very insincere" by providing inconsistent accounts of how the crime occurred and that he also continued to minimize his culpability for the crime in an implausible manner by contending that his actions were, at least in part, attributable to self-defense.

The Board also stated that Rodriguez had not sufficiently demonstrated that he understood that jealousy had been a major contributing factor to his commission of the crime and that he had not conducted rehabilitative programming related to "jealousy issues that [he] had with women." For example, the Board noted that Rodriguez had not taken a class on domestic violence so that he could understand "the whole cycle of control," that led him to murder Ochoa.

The Board also noted that while Rodriguez had attempted to address his substance abuse issues, he had not done so "completely." In support of this determination, the Board stated that Rodriguez's testimony concerning his substance abuse issues revealed that he did not fully understand the "internal triggers" that led him to begin using drugs.

The Board also noted that while Rodriguez had "gone through" some substance abuse programs in prison, he had not attended Alcoholics Anonymous or Narcotics Anonymous classes, which concerned the Board given that Rodriguez's substance abuse was a critical causative factor leading him to commit the murder.<sup>15</sup>

D. *Rodriguez's petition for habeas corpus in the trial court*

Rodriguez filed a petition for habeas corpus in the trial court in which he contended that the Board's decision violated his constitutional right to due process because the decision was not supported by any evidence that he currently posed an unreasonable risk of danger to the public. The trial court denied the petition. The court concluded, "[The Board's] decision contains 'some evidence' to support the finding[ ] of unsuitability as well as a rational nexus between the evidence and the finding of current dangerousness."

E. *Rodriguez's petition for habeas corpus in this court*

After the trial court denied his petition, Rodriguez filed a petition for habeas corpus in this court in which he contended that there was no rational nexus between the evidence that the Board relied upon to deny him parole and its finding of current dangerousness. This court issued an order to show cause and appointed counsel for Rodriguez. In addition, we directed Rodriguez to file a supplemental petition, permitted

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<sup>15</sup> In rendering its decision, the Board noted that it took into consideration that the October 2014 psychological evaluation stated that Rodriguez presented a low risk for violence if released on parole.

the respondent to file a return, and permitted Rodriguez to file a traverse. After the parties filed the aforementioned documents, we heard oral argument in the matter.

### III.

#### DISCUSSION

*There is some evidence to support the Board's determination that Rodriguez is unsuitable for parole on the ground that he would pose a danger to the public if released*

Rodriguez claims that there is no evidence to support the Board's determination that he is unsuitable for parole because he would pose a danger to the public if released.<sup>16</sup>

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<sup>16</sup> In his original pro se petition for habeas corpus, Rodriguez contends that he "ha[d] been in prison over 23 years, clearly disproportionate to a second degree murder conviction per the California Code of Regulation Division Two matrix for first and second degree murder." Rodriguez also appears to contend that the Board erred by failing to include good time credits in setting an adjusted base term under California Code of Regulations, title 15, section 2403, subdivision (c), which led to an unconstitutionally disproportionate sentence. Neither claim was reasserted in the supplemental petition filed by counsel.

Although the adjusted base term calculated by the Board represents an approximation of the punishment the Board deems proportionate to the particular prisoner's offense, it does not constitute the maximum constitutional prison term. (*In re Butler* (2015) 236 Cal.App.4th 1222, 1243.) Individual culpability is the measure of proportionality. (*Id.* at p. 1239.) In addition, "factors that may later serve to reduce the base term, such as credit for presentence custody and *prison conduct* . . . are based on circumstances occurring after commission of the base crime *and are therefore unrelated to proportionality analysis*." (*Id.* at p. 1239, fn. 8, italics added.)

"In determining whether a sentence is cruel or unusual as applied to a particular offender, 'a reviewing court must examine the circumstances of the offense, including its motive, the extent of the defendant's involvement in the crime, the manner in which the crime was committed and the consequences of the defendant's acts.' " (*In re Bulter, supra*, 236 Cal.App.4th at p. 1240.) A defendant "must overcome a 'considerable burden' to show the sentence is disproportionate to his level of culpability." (*People v. Em* (2009) 171 Cal.App.4th 964, 972.)

A. *Governing law*

The decision whether to grant parole is an inherently subjective determination. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 655.) In determining whether to grant parole, the Board must consider "[a]ll relevant, reliable information available" (Cal. Code Regs., tit. 15, § 2402, subd. (b)), and shall consider various circumstances tending to show both suitability and unsuitability (*id.*, subds. (c), (d)). Among the information that the Board shall consider is the inmate's "past and present mental state" and his "past and present attitude toward the crime" (*id.*, subd. (b)). One of the circumstances tending to show suitability for parole is that an inmate has engaged in "[i]nstitutional activities [that] indicate an enhanced ability to function within the law upon release." (*Id.*, subd. (d)(9).)

In *Shaputis*, *supra*, 53 Cal.4th 192, the Supreme Court outlined the law governing judicial review of parole decisions. "[B]ecause the paramount consideration for both the Board and the Governor under the governing statutes is whether the inmate currently poses a threat to public safety, and because the inmate's due process interest in parole mandates a meaningful review of a decision denying parole, the proper articulation of the standard of review is whether there exists '*some evidence*' demonstrating that an inmate poses a current threat to public safety, rather than merely some evidence suggesting the existence of a statutory factor of unsuitability." (*Id.* at p. 209, italics added.)

The *Shaputis* court also reaffirmed the extremely deferential nature of the "some evidence" standard of review:

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Nothing in either Rodriguez's original petition for habeas corpus or in his supplemental petition demonstrated such disproportionality. Accordingly, we reject Rodriguez's claims that he is serving an unconstitutionally disproportionate sentence.

"It is settled that under the 'some evidence' standard, '[o]nly a modicum of evidence is required. Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of [the Board or] the Governor. . . . [T]he precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of [the Board or] the Governor . . . . It is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole. As long as the . . . decision reflects due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards, the court's review is limited to ascertaining whether there is some evidence in the record that supports the . . . decision.' " (*Shaputis, supra*, 53 Cal.4th at p. 210.)

In addition, a reviewing "court may not . . . substitute its own credibility determination for that of the parole authority." (*Shaputis, supra*, 53 Cal.4th at p. 214; see also *In re Juarez* (2010) 182 Cal.App.4th 1316, 1341 (*Juarez*) ["The Board is certainly entitled to rely on a finding that a prisoner lacks credibility . . . to deny parole after it considers the individualized circumstances of a case"].)

In remarking on the use of an inmate's degree of insight into his or her criminal behavior as a factor in parole suitability determinations, the *Shaputis* court noted that prior opinions of our Supreme Court had stated that "[p]ast criminal conduct and current attitudes toward that conduct may both be significant predictors of an inmate's future behavior should parole be granted." (*Shaputis, supra*, 53 Cal.4th at p. 219.) The *Shaputis* court also noted, "[W]e have expressly recognized that the presence or absence of insight is a significant factor in determining whether there is a 'rational nexus' between the inmate's dangerous past behavior and the threat the inmate currently poses to public safety." (*Id.* at p. 218.)

B. *Application*

During his January 2015 testimony before the Board concerning the circumstances of the murder, Rodriguez initially stated that Ochoa was unarmed and that Ochoa did nothing to precipitate the killing. Later, during the same hearing, the presiding commissioner noted that, just a few months prior to the parole hearing, Rodriguez told a psychologist who was performing a forensic evaluation for the Board that Ochoa had been armed, had angrily approached him just before the shooting, and had reached for a gun while Rodriguez shot him. Rodriguez then admitted that this latter version was in fact how he remembered the killing.

In light of Rodriguez's inconsistent testimony at the parole hearing concerning the circumstances of the murder, the Board could reasonably find that Rodriguez "lack[ed] credibility." (*Juarez, supra*, 182 Cal.App.4th at p. 1341.) That Rodriguez would provide such dramatically differing accounts of the killing *at the same hearing* also provides a reasonable basis for the Board's finding that Rodriguez had "a *material* deficiency in [his] understanding and acceptance of responsibility for the crime." (*In re Rodriguez* (2011) 193 Cal.App.4th 85, 99.)<sup>17</sup> The Board could reasonably consider such a lack of insight to be a significant factor in determining whether there was a " 'rational nexus' between

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<sup>17</sup> We assume for purposes of this opinion that Rodriguez is correct that the *In re Rodriguez* court's statement that there must be a "*material* deficiency" (*In re Rodriguez, supra*, 193 Cal.App.4th at p. 99) in an inmate's insight to support a finding of current dangerousness remains correct in the wake of the Supreme Court's subsequent decision in *Shaputis*.

the inmate's dangerous past behavior and the threat the inmate currently poses to public safety." (*Shaputis, supra*, 53 Cal.4th at p. 218.)

In arguing that any inconsistencies in Rodriguez's account of the crime do not constitute some evidence of current dangerousness, Rodriguez cites a line of cases decided before *Shaputis*<sup>18</sup> that rely on *In re Palermo* (2009) 171 Cal.App.4th 1096, 1112 (*Palermo*) for the proposition that a remorseful inmate's plausible claim that his conduct related to the life crime was less culpable than that which could be inferred from the evidence in the record does not constitute some evidence of current dangerousness. We assume for purposes of this decision that Rodriguez's contention that he shot Ochoa in self-defense and then took a gun from Ochoa before fleeing was plausible<sup>19</sup> and that *Palermo* and its progeny remain good law in the wake of *Shaputis*. (But see *In re Butler* (2014) 231 Cal.App.4th 1521, 1533 ["*Palermo* and its progeny seem inconsistent" with *Shaputis*]; *In re Tapia* (2012) 207 Cal.App.4th 1104, 1113 ["*Palermo* has been called into question by [*Shaputis*]").) However, neither *Palermo*, nor any of the other cases cited by Rodriguez involved, as does this case, an inmate who provided materially differing accounts of the commitment offense *at the same parole hearing*.<sup>20</sup> Thus, *Palermo* and

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<sup>18</sup> The cases are *In re Twinn* (2010) 190 Cal.App.4th 447, *In re Moses* (2010) 182 Cal.App.4th 1279, and *In re Juarez, supra*, 182 Cal.App.4th 1316.

<sup>19</sup> In denying parole, the Board stated, "[T]he whole story about, I took the gun . . . or something like that out of the fanny pack, doesn't make any sense at all. Because you're there, you shoot him, and the only evidence of self-defense would be the gun, and then you take it and then the police don't find it? So that is a very inexplicable understanding of what happened. And you went back to that today."

<sup>20</sup> In his supplemental petition, Rodriguez claims that "[t]he Board denied Mr. Rodriguez parole based upon his telling of inconsistent versions *in the past* regarding the



its progeny are distinguishable because the Board could have reasonably found that Rodriguez's insincerity and apparent willingness to tell the Board "what they wanted to hear," concerning the circumstances of the life offense reflected a deficiency in his present mental state concerning the circumstances of the life crime.

There was also evidence in the record to support the Board's findings that Rodriguez lacked insight into his jealousy as a motive for the killing.<sup>21</sup> During his October 2014 psychological evaluation, Rodriguez denied that feelings of jealousy had caused him to murder Ochoa, while at the parole hearing, Rodriguez agreed with a commissioner's suggestion that jealousy had been a major contributing factor to his commission of the murder.<sup>22</sup> In addition, there is evidence to support the Board's finding that Rodriguez had not taken a domestic violence course that would help him understand the "cycle of control and not wanting people to be with other people."

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circumstances surrounding the life crime." (Italics added.) As described in the text, Rodriguez provided inconsistent accounts of the life crime within minutes *at the same parole hearing*.

<sup>21</sup> Rodriguez's October 2014 psychological evaluation states: "Of some concern is [Rodriguez's] less than sufficient grasp of his personal limitations and their impact upon his choices of intimate partners and relational problems. Undeniably, Mr. Rodriguez has taken time to examine several factors, which led to his involvement in the life crime, yet he merely touched upon the area of interpersonal dynamics and his past difficulties in addressing his marital and intimate problems. He was still unsure of why he felt abandoned by his wife and seemed unable to accept changes in their relational dynamics at the time their son was born, and his answers did not shed a sufficient light upon why he was drawn to unsavory and even criminal characters in times of personal crises."

<sup>22</sup> When asked, "Did you really want [Kreider] to be with anybody besides you?" Rodriguez responded, "No." A commissioner then stated, "Okay. That's really what it comes down to." Rodriguez responded, "Yes, ma'am."

There is also evidentiary support for the Board's finding that Rodriguez had failed to completely address his substance abuse problem. Despite admitting that his addiction to methamphetamine was a primary cause of the murder, and admitting that he was on methamphetamine at the time of the murder, Rodriguez had not attended Narcotics Anonymous, and was not on a wait list to attend such program. Further, after reviewing Rodriguez's testimony concerning his substance abuse and his relapse prevention plan, we conclude that there is evidence to support the Board's finding that his understanding of his addiction was "[v]ery vague, very general, not really going to [his] internal triggers."<sup>23</sup>

We acknowledge that there is much evidence in the record that would support a determination that Rodriguez is suitable for parole. Among other factors, he has developed realistic parole plans, obtained numerous vocational certificates, and has completed numerous self-help programs. He has a remote and minor disciplinary history while in prison, as well as an exemplary work history. Notwithstanding this, and other evidence, that would support a grant, we also have identified evidence in the record that supports the Board's determination that Rodriguez is unsuitable for parole because he would pose a danger to the public if released. Under these circumstances, we may not second guess the Board's suitability determination. (See *Shaputis, supra*, 53 Cal.4th at p.

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<sup>23</sup> In Rodriguez's psychological evaluation, the evaluator wrote, "[Rodriguez] is encouraged to complete his work and to update his currently quite rudimentary substance abuse relapse prevention plan to reflect his struggles with intoxicants, and to tailor various interventions to his specific triggers and warning signs. Updating his plan with this contingency in mind would only strengthen his chances for . . . success in the community."

210 [" 'It is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole' "].)<sup>24</sup>

#### IV.

#### DISPOSITION

The petition is denied.

AARON, J.

WE CONCUR:

McDONALD, Acting P. J.

IRION, J.

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<sup>24</sup> We specifically reject Rodriguez's argument that, "[i]n short, the basis for the Board's denial, if allowed to stand, would justify denying parole to Mr. Rodriguez for the rest of his life, no matter how well he conducts himself during his continued incarceration." The grounds that the Board primarily relied on in denying Rodriguez parole—his present mental state concerning the circumstances of the life crime and his failure to engage in specific self-help programs identified by the Board—are grounds that are amenable to change.